

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1242

To be argued by
JONATHAN J. SILBERMANN

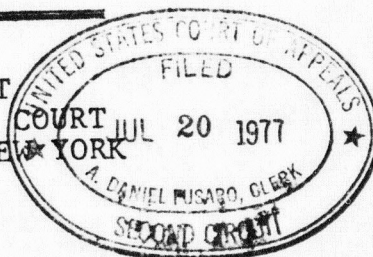
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
-against-
LORRAINE V. GLOVER,
Defendant-Appellant.

Docket No. 77-1242

APPENDIX TO APPELLANT'S BRIEF

ON APPEAL FROM A JUDGMENT
OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



MARTIN ERDMANN, ESQ.,
THE LEGAL AID SOCIETY,
Attorney for Appellant
FEDERAL DEFENDER SERVICES UNIT
509 United States Courthouse
Foley Square
New York, New York 10007
(212) 732-2971

JONATHAN J. SILBERMANN,
Of Counsel.

PAGINATION AS IN ORIGINAL COPY

CRIMINAL DOCKET - U.S. District Court

OFFENSE MO ☐ JUDGE/MAGISTRATE Assigned U.S.
 OFFENSE MO ☐ 0208 01 0839 vs.
 DEFEANOR Mis ☐ Disp./Sentence
 FELONY Fel ☒ District Office (LAST, FIRST, MIDDLE)

GLOVER, LORRAINE V.

Case Filed
 Mo. Day
 10 15
 No. of Defs
 * 01

76 0963 01

U.S. MAG. CASE NO. 76-940

BAIL - RELEASE

☐ AMT ☐ Fugitive
 Denied Set ☐ Pers. Recog.
☒ PSA

Conditions
☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Pny Cust
☐ Other

U.S. TITLE/SECTION

18:1711

OFFENSES CHARGED

Embezzlement by Postal Employee

ORIGINAL COUNTS

1

18:1711

Embezzlement of Funds by Postal Employee.

1

II. KEY DATES & INTERVALS

ARREST or

INDICTMENT

ARRAIGNMENT

TRIAL

SENTENCE

U.S. Court by Regt.

High Risk Date

Information ☒

10-21-76

Trial Set For

Vair Dire

Disposition of Charges

5-4-77

* 8-16-76

10-15-76

10-21-76

3-22-77

3-22-77

3-23-77

5-4-77

Summons Served

Indict Waived

1st Plea

NG ☒ G ☐ NOL

Trial Began

Convicted ☒

On All Charges

First Appearance

In Charging District

Superseding ☒ Indict/Info ☐

Final Plea

G. Plea ☐ W/Drawn ☐

Trial Ended

Dismissed ☐

On Lesser * Offense(s)

1-24-77

NG ☐ G ☐ NOL

3-23-77

On Govern'ts Motion

WOP: ☐ WP

MAGISTRATE

INITIAL/NO.

OUTCOME:

Search Warrant
 Issued
 Return
 Summons
 Issued
 Served

DATE

INITIAL/NO.

INITIAL APPEARANCE DATE

8-17-76

MDJ-08AB

PRELIMINARY EXAMINATION

OR

REMOVAL HEARING

Date Scheduled

Date Held

WAIVED ☐ NOT WAIVED ☐INTERVENING INDICTMENT ☒

Tape Number

DISMISSED

HELD FOR GJ OF OTHER PROCEEDING IN THIS DISTRICT

HELD FOR GJ OF OTHER PROCEEDING IN DISTRICT BELOW

Arrest Warrant Issued

COMPLAINT

8-17-76

MDJ-08AB

OFFENSE

(In Complaint)

18 USC 1711 - POSTAL EMBEZZLEMENT

U.S. Attorney or Asst.

ATTORNEYS

Defense ☐ CJA ☐ Ret ☐ Waived ☐ Self ☐ None / One: ☒ D ☐ CD

Howard W. Goldstein

791-1917

* Show last names and suffix numbers of other defendants on same indictment/information.

EXCLUDABLE DELAY

(a) (b) (c) (d)

DATE

(DOCUMENT NO.)

PROCEEDINGS

8-17-76

Complaint filed, Defendant presented, Legal Aid assigned. Defendant released on own recognizance. Under PSA supervision,

10/15/76

Information filed, 76 Cr. 963.

10-21-76

Deft. (atty Leonard F. Joy) pleads not guilty. R.O.R. Assigned to Bonsal, J. for all purposes....Gagliardi, J.

11-01-76

Pre-trial conf. held before Judge Bonsal: trial set for 12-7-76.

2 11-1 E 1

1-24-77

Filed Superseding Indictment and referred to Bonsal, J.... PIERCE, J.

03-22-77

Jury trial begun before Judge Bonsal.

03-23-77

Trial cont'd. and concluded. Deft. found guilty. P.S.R. ordered. 5-4-77 set for sentence. Deft. R.O.R. Bonsal, J.

03-28-77

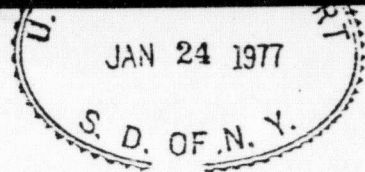
Filed Govt's requests to charge (marked Court's exhibit 1D).

05-04-77

Filed Judgment (atty L Joy) deft sent. to 2 yrs I.S.S. & placed on prob. for 2 yrs. w/super. Bonsal J. issued all copies. Orig. charges dismissed.

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
	DOCUMENT NO.		Interval Section II (a)	Start Date End Date (b)	Lit Code (c)	Total Days (d)
05-06-77	Filed Notice of Appeal that deft appeals to the U.S.C.A. from the Judgment entered on 5/4/77 . Leave to proceed in forma pauperis granted Bonsal J. Mailed copy to U.S.atty & deft.					
FINE AND RESTITUTION PAYMENTS						
DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA

- v -

LORRAINE V. GLOVER,

Defendant.

INDICTMENT

S 77 Cr.

(5) 76 CR. 963

The Grand Jury charges:

From on or about the period May 1, 1976 through on or about August 16, 1976, in the Southern District of New York, LORRAINE V. GLOVER, the defendant, being a Postal employee, did unlawfully, wilfully and knowingly embezzle and convert to her own use funds in an amount of approximately \$1000, which had come into her hands and under her control in the execution and under color of her office, employment and service.

(Title 18, United States Code, Section 1711.)

Lucille A. Carinci
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

RECEIVED
JAN 24 1977
CLERK
H. J. Harrison
Clerk

JAN 24 1977

United States District Court
SOUTHERN DISTRICT OF NEW YORK
THE UNITED STATES OF AMERICA

vs.

LORRAINE V. GLOVER,

Defendant.

INDICTMENT

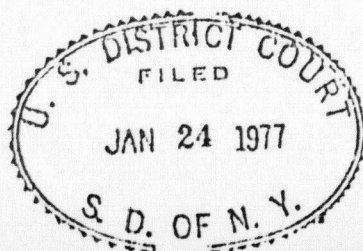
S. 77 Cr.

(18 U.S.C. § 1711)

ROBERT B. FISKE, JR.
United States Attorney.

A TRUE BILL

Lucille A. Carrice
Foreman.



*referred to Borsal J. as being superseding
to Indictment 76 Cr. 963 (Borsal J.).*

M. Pierce J.

MAR 22 1977 JSC 003 EMPANDED TRIAL BEGON

MAR 23 1977 TRIAL CONTD + CONCLUDED JURY VERDICT
DEPT. GUILTY. PRE-SENTENCE REPORT ORDERED.
MAY 4 1978 SET FOR SENTENCE DEPT. A.Q.R.
BORSAL J.

(Signature)

MAY 4 1977 LORRAINE V. GLOVER (ATTY L. JOY LEGAL
AID PRESENT) COMMITTED TO CUSTODY
OF ANY GEN. FOR IMPRISONMENT FOR 2 YEARS
EXECUTION OF SENTENCE SUSPENDED
PROBATION 2 YEARS. ADVISED OF
RIGHT TO APPEAL
ORIGINAL INDICTMENT BORSAL J.
DISMISSED

COPY
RAYMOND F. BURGHART, Clerk
Raymond F. Burghart
Deputy Clerk

jkal

CHARGE OF THE COURT

(Bonsal, J.)

THE COURT: Mr. Foreman, as you are,
Mr. Martin, by virtue of occupying the first chair,
and ladies and gentlemen of the jury:

First of all, I would like to thank each
of you for the care and attention which you have shown
throughout this short trial, and tell you that I
appreciate the sacrifices I know each of you has been
called upon to make in your own private lives so
that you could serve in this very important public
capacity of being on a federal jury. I am sure you
will bear with me and give me the same degree of atten-
tion which you have shown throughout the trial so that
you will understand the principles of law which apply
to this case.

Ladies and gentlemen, it is your duty
here to weigh the evidence calmly and dispassionately,
without any sympathy, without any prejudice for
either the government or this defendant.

Remember, I told you yesterday that every-
one appearing before this bar of justice is entitled
to a fair and an impartial trial regardless of his or
her occupation or station in life. And your ver-

1 jka2

2 dict must be based solely on the testimony you heard
3 from that witness stand and the exhibits which you
4 received and on nothing else at all.

5 Then you recall I told you yesterday that
6 it was my function to set forth the rules of law which
7 apply to the case, and on that you must accept my
8 instructions. But you, the jury, are the sole judges
9 of the facts. It is not what a lawyer says a witness
10 has testified to or what a document contains or shows
11 or what I might say on these subjects. It is what
12 you, the jury, decide.

13 I also told you yesterday that during the
14 trial I would have conversations with one or the
15 other of the lawyers. Indeed I did. I sustained
16 objections and I overruled objections. I told you
17 to pay no attention to these conversations, and
18 above all, ladies and gentlemen, draw no inference from
19 anything that I may have said during the trial that
20 might lead you to believe I favor one side or the
21 other here, because of course I do not. That is not
22 my function. That is for you and your determination.

23 Throughout this charge, ladies and gentle-
24 men, I will instruct you that you may not convict this
25 defendant, Mrs. Glover, unless and until you are satisfied

1 jka3

2 that the government has proven each element compris-
3 ing the crime charged beyond a reasonable doubt.

4 And what is meant by "beyond a reasonable
5 doubt"? Of course the words suggest the answer. It
6 is a doubt based on reason. It is a doubt which a
7 reasonable man or woman might entertain. But a
8 reasonable doubt is not a fanciful doubt. It is not
9 an imaginative doubt. It is not a doubt which a juror
10 might conjure up to avoid performing an unpleasant
11 task. It is a reasonable doubt. It is a doubt
12 which arises in a juror's mind because of something in
13 the evidence or the absence of evidence. It is the
14 kind of doubt which would cause a reasonable man
15 or woman in a serious or important matter in his or
16 her life to hesitate to act.

17 The burden is on the government to prove
18 the guilt of the defendant beyond a reasonable doubt.
19 The government need not prove the defendant's guilt
20 beyond all possible doubt. If that were the rule,
21 few people, however guilty they might be, would ever
22 be convicted. In this world of ours, it is prac-
23 tically impossible for one to be absolutely con-
24 vinced of any controverted fact which by its nature is
25 not susceptible to mathematical precision or to

1 jka4

2 mathematical certainty. So the law is that the
3 government must prove the guilt of the defendant beyond
4 a reasonable doubt, not beyond all possible doubt.

5 While I review the indictment with you,
6 ladies and gentlemen, remember, as I told you yesterday,
7 the indictment is merely the way in which the govern-
8 ment brings charges against individuals who it claims
9 have violated the law.

10 I told you then and I repeat now that the
11 indictment is not any evidence of the guilt of Mrs.
12 Glover, nor does it detract in any degree from the
13 presumption of innocence with which the law surrounds
14 her until her guilt is proven. And this presumption
15 of innocence remains with Mrs. Glover throughout
16 the trial, and applies to the consideration of each
17 of the essential elements of the crime charged, and
18 this presumption of innocence remains unless and until
19 you, the jury, find that the defendant's guilt has
20 been proved beyond a reasonable doubt.

21 And as you heard counsel say, Mrs. Glover
22 has pled not guilty in this case. And by doing so,
23 she has put every material allegation in the indictment
24 to the test, and the government must prove each of
25 these elements beyond a reasonable doubt. And this

1 jka5

2 burden has remained on the government throughout,
3 and if you find that the government has not pr. d
4 that the defendant is guilty beyond a reasonable
5 doubt, then of course you must find the defendant not
6 guilty.

7 This has been a short trial, ladies and
8 gentlemen. You heard the summations in the last
9 hour or so. We just started yesterday. I am not
10 going to review the evidence again with you because
11 as I told you it is what you remember and decide, not
12 what the lawyers say or I say.

13 I would just say simply, and it is your
14 recollection that controls, as I understand it, the
15 government is contending that Mrs. Glover, the
16 defendant, during this period of time last year, May or
17 August, whenever it was, took money from the post
18 office, Postal Service, took some thousand dollars
19 out of her box, and that she took this money for her
20 own use, for her own purposes. And Mrs. Glover denies
21 this. She denies she took any money, as I under-
22 stand it.

23 The statute involved here, ladies and gentle-
24 men, is Section 1711 of Title 18 of the United States
25 Code, which provides, to the extent here relevant:

1 jka6

2 "Whoever, being a postal ... employee ... uses
3 or converts to his own use ... except as authorized
4 by law, any money or property coming into his hands
5 or under his control in any manner, in the execu-
6 tion or under the color of his office, employment,
7 or service, whether or not the same shall be the
8 money or property of the United States ... is guilty
9 of embezzlement."

10 Any embezzlement is a crime, and what does
11 embezzlement mean? Embezzlement is merely where you
12 receive money lawfully, but instead of using it for the
13 purposes for which it is to be used, you keep it. That
14 is embezzlement, and that is basically what the government
15 here is contending.

16 In other words, as I recall the evidence, the
17 window clerks creceive a box with some stamps, money, and
18 other things in it. They dealt with the public and sold
19 stamps and sold other things. But all that belonged to
20 the government, but they received it lawfully, because
21 they are Post Office employees. And the crime that is
22 charged, which of course the defendant denies here, is
23 that Mrs. Glover received money and took it for her own
24 purposes.

25 The indictment charges, ladies and gentlemen,

1 jka7

2 that "from on or about the period May 1, 1976 through
3 on or about August 16, 1976" -- there is nothing magic
4 about these dates; as I recall the testimony we heard,
5 it was during this period -- the defendant, being a
6 postal employee, did unlawfully, wilfully and knowingly
7 embezzle and convert to her own use funds in an
8 amount of approximately \$1000, which had come into her
9 hands and under her control in the execution and under
10 color of her office, employment and service.

11 You remember that the indictment refers to
12 taking \$1000, you remember there was some evidence as
13 to various figures in the audits. There was one of
14 970 and one of 1007. There is some testimony about
15 taking small amounts or reference to that. All you have
16 got to find, as far as that thousand dollars is con-
17 cerned -- there is nothing magic about it -- but you
18 must find on the evidence, and before you could find
19 Mrs. Glover guilty here, you must find she took at
20 least \$100 -- at least \$100. Beyond that it makes
21 no difference.

22 In order to find Mrs. Glover guilty of the
23 crime charged by the government here, the government
24 has the burden of proving each of these elements beyond
25 a reasonable doubt:

1 jka8

2 First, that during this period of time that
3 I mentioned to you in the indictment, the defendant was
4 an employee of the post office. You consider the
5 evidence on this about window clerks, finance clerks,
6 whatnot. That is the first element. You
7 must find that she was an employee.

8 Second, that during the period set forth
9 in the indictment, in the Southern District of New York --
10 well, this College Station post office is in the Southern
11 District of New York -- that Mrs. Glover embezzled
12 funds in excess of \$100 from the post office. I told
13 you what embezzled was, taking money that lawfully
14 came into her hands; that could be money, I suppose,
15 or stamps, any of the things that were in these boxes,
16 came into her possession lawfully, and converting them
17 to her own use. That is the second element which
18 the government must prove beyond a reasonable doubt.

19 Third, and this is really corollary to the
20 second, that if you find that any money or stamps
21 were taken, that you have found that the money or
22 stamps came into her possession lawfully as a window
23 clerk or finance clerk.

24 And, fourth, that Mrs. Glover was acting
25 knowingly, wilfully and unlawfully.

1 jka9

2 If you find, ladies and gentlemen, that
3 the defendant, Mrs. Glover, did take money, stamps or
4 other things, from the box, it is quite immaterial
5 whether she intended to return it some time later.
6 It is also quite immaterial whether or not the Postal
7 Service or the United States lost any money by reason
8 of her actions.

9 You will see from the foregoing, ladies
10 and gentlemen, that one of the vital elements which
11 the government has to prove, and that was the fourth
12 element I read to you, was that Mrs. Glover was
13 acting knowingly, wilfully and unlawfully. And how
14 do you determine that? In other words, did she
15 have the criminal intent here to violate the law?

16 An act is done wilfully and knowingly if
17 it is done voluntarily and purposely. And an act is
18 done wilfully, knowingly and unlawfully if it is done
19 with an evil motive or purpose. Of course embezzling
20 would be an evil motive or purpose. But an act is
21 not done wilfully, knowingly or unlawfully if it is done
22 by mistake, by carelessness, or by other innocent rea-
23 son.

24 Of course we can't look into Mrs. Glover's
25 mind to determine exactly what her intentions were on

1 jkal0

2 these occasions. But these are matters which you the
3 jury can determine by a careful consideration of the
4 facts and circumstances which were brought out during
5 the trial.

6 Knowledge and intention, wilfulness, if you
7 will, may only be understood when put in context
8 with the circumstances surrounding the defendant's acts
9 and inferences which you, the jury, find may reason-
10 ably be drawn therefrom.

11 You might ask yourselves whether you think
12 the transactions about which you heard testimony were
13 normal or abnormal; whether you think the background
14 of Mrs. Glover made it likely or unlikely that she fully
15 understood what she was doing, whether you think she
16 had a motive, such as a financial interest. These
17 are the kinds of questions, ladies and gentlemen --
18 they are not the only ones -- that you should ask your-
19 selves in determining Mrs. Glover's knowledge
20 and intention, criminal intent, if you will. And I
21 don't suggest any answer to these questions. Be-
22 cause after all, you ladies and gentlemen, in your
23 daily lives, are continually called upon to use your
24 common sense and experience to determine from the ac-
25 tions or statements of others what their real intentions

1 jkall

2 and purposes are. And please do the same thing
3 here with respect to this defendant, Mrs. Glover.

4 As I recall, during the trial, ladies and
5 gentlemen, the government introduced two statements
6 made by Mrs. Glover. I think the first one was made in
7 the presence of Mr. Marshall at the College Station on
8 August 16th. I think it was Exhibit 9. I think
9 the statement, and your recollection of course con-
10 trols, referred to something about paying a doctor for
11 an abortion. And then the government also contends,
12 I think again on the basis of Mr. Marshall's testimony, that
13 the next day in the United States Attorney's office Mrs.
14 Glover signed another statement to the effect that
15 she had read the statement she had signed the previous
16 day and that she did not wish to make any changes in
17 it.

18 As I recall it, Mrs. Glover does not deny
19 that she signed these statements. But she denies
20 that they were true and she says that she signed them
21 because she was tired of being questioned, and again
22 it is your recollection that controls, that was some-
23 thing about that she thought that if she could indicate
24 hardship or family problems maybe she would get a better
25 understanding with the post office.

1 jkal2

2 She denies that she took the money, and
3 she contends that these statements were not true.

4 So consider all this, ladies and gentlemen,
5 and consider whether you find that Mrs. Glover did
6 sign the statements, and if you find that she did,
7 consider whether you find she signed them voluntarily.
8 And if you find that she did sign these statements
9 and that she did so voluntarily, then you may, but you
10 are not required to, but you may consider these state-
11 ments as evidence that Mrs. Glover had a guilty con-
12 science about this. You may consider it in connection
13 with her knowledge and intent as to what happened at
14 the post office.

15 You have heard during the course of the
16 trial, ladies and gentlemen, both direct evidence and
17 circumstantial evidence. Direct evidence is the
18 testimony of a witness as to what he saw and did.
19 Circumstantial evidence is evidence of circumstances
20 from which you, the jury, can infer, by a process of
21 reasoning, certain facts which are sought to
22 be established as true.

23 Yesterday would have been a classic example
24 of circumstantial evidence, when you went home in the
25 rainstorm we had, and when you got home, and I daresay

1 jkal3

2 you were probably pretty darn wet, and if some lucky
3 person had been sitting in your house or apartment
4 watching television and watched you come in, they would
5 have said to you, "It's raining outside." They could
6 look at you and by a process of reasoning conclude
7 that it was raining outside. They didn't look outside
8 themselves but they looked at you and that is circum-
9 stantial evidence. And there is circumstantial evi-
10 dence in this case.

11 Both direct evidence and circumstantial
12 evidence are good evidence, but in either case you,
13 the jury, must be convinced by the evidence of the
14 guilt of a defendant beyond a reasonable doubt before
15 you can find that defendant guilty. Of course differ-
16 ent inferences can be drawn from the evidence,
17 whether it is direct or circumstantial. The govern-
18 ment may ask you to draw one set of inferences and the
19 defendant another. It is for you, the jury, alone
20 to determine what inferences you will draw from the
21 evidence on the facts that you find to have been
22 proven. But remember, these inferences must be reason-
23 able inferences.

24 You, the jury, are the exclusive judges of
25 the credibility of the several witnesses who testified

1 jka14

2 before you during this trial. And there were sub-
3 stantial differences in the testimony. You consider
4 the testimony of all witnesses and apply the same
5 standards, whether the witnesses are called by the
6 government or whether they are called by the defend-
7 ant. And it is the quality of the testimony that
8 is important, the testimony that you think was most
9 likely to represent a true picture of the situation.

10 And in considering the credibility of these
11 witnesses, ladies and gentlemen, please use your
12 plain, everyday common sense. You saw them on the
13 stand. How did they impress you? Did you think
14 they were testifying frankly, candidly, fairly?

15 So here, again, ladies and gentlemen, apply
16 your common sense and experience just as you do in
17 determining an important matter in your own lives when
18 you are called upon to decide whether you have been given
19 a true picture of a given situation.

20 I think you may consider a witness' de-
21 meanor, a witness' background, occupation or business,
22 a witness' candor or lack of it, a witness' possible
23 bias, the accuracy of a witness' recollection, and you
24 consider whether you find a witness' testimony
25 supported or whether you find it to be contradicted

1 jkal5

2 by other testimony or evidence which you find to
3 be reliable.

4 You consider whether a witness has an
5 interest in the case. Here the government put on
6 several people from the Postal Service. There was
7 Mrs. Bolling, Inspector Panzera, Marshall, Feiman; they
8 all work for the post office. In a sense I suppose
9 in this case we would call them sort of law-enforcement
10 people, and they may have an interest in prosecuting
11 people whom they think have violated the law. You
12 may consider their interest.

13 And then of course Mrs. Glover testified.
14 She testified voluntarily. She did not have to. She
15 testified voluntarily, but she has got a very important
16 interest in this case. And you may consider that
17 too. And of course you may find that a witness is
18 telling the complete truth to you in spite of his or
19 her interest in the case. But the interest is
20 a factor for you to consider in judging that witness'
21 credibility.

22 A witness may be discredited or impeached
23 if you find that at other times that witness made state-
24 ments inconsistent with that witness' present testimony.
25 And of course if you find that any witness lied to you

1 jkal6

2 or tried to mislead you, you can reject all of the
3 testimony of that witness. You can accept part
4 of a witness' testimony if you find it reliable, and you
5 can reject the rest.

6 You will have the right, of course, to
7 see any of the exhibits which have been received in
8 evidence. If you want to see them, just let me know
9 by telling the marshal.

10 And as you deliberate, ladies and gentlemen,
11 remember that a jury deliberation is one in which
12 everybody participates. Each of you should express
13 your views and exchange views, and please don't be afraid
14 of changing your original view because of pride of opinion
15 or stubbornness or any other reason, should you find
16 that your original view is wrong. But on the other
17 hand, ladies and gentlemen, never surrender your honest
18 conviction, never surrender your honest conviction,
19 because of the opinion of your fellow jurors or be-
20 cause you may be outnumbered. Never surrender
21 that.

22 You will seek to arrive at a verdict here
23 reasonably and consistent with the conscientious convic-
24 tion of all 12 of you. It is obviously very im-
25 portant both to the government and to Mrs. Glover, that

1 jkal7

2 this case be decided by you. And this being a
3 criminal case, ladies and gentlemen, your verdict must
4 be a unanimous verdict, representing the conscientious
5 convictions of all 12 of you.

6 And should you find, after reviewing the
7 evidence, ladies and gentlemen, that the defendant, Mrs.
8 Glover, is not guilty, you must not hesitate for any
9 reason to find her not guilty. But on the other hand,
10 if you find that the law has been violated by Mrs.
11 Glover as charged, you must not hesitate to render a
12 verdict of guilty because of sympathy or any other reason
13 at all.

14 And please do not consider the question of
15 possible punishment of the defendant in case you find
16 the defendant guilty. Don't let this enter into your
17 deliberations in any way. The duty of imposing
18 sentence rests on the court. And you must not allow
19 consideration of possible punishment to affect you or
20 make you seek to avoid the performance of an un-
21 pleasant task.

22 And in conclusion, ladies and gentleman,
23 I am sure that if you listen to your fellow jurors and
24 express your own views, and apply your common sense,
25 you will reach a fair verdict in this case. And

1 jka18

2 remember that your verdict must be reached without
3 fear, without favor, without prejudice, and without
4 sympathy. And your verdict here of course will be
5 either guilty or not guilty.

6 Will counsel come forward, please.

7 (At the side bar.)

8 THE COURT: Okay.

9 MR. JOY: I don't have any.

10 THE COURT: Do you have anything?

11 MR. LIVINGSTON: No, your Honor.

12 THE COURT: Thank you, gentlemen. All
13 right, no exceptions, no requests. All right.

14 (In open court.)

15 THE COURT: Mr. Brailey and Mrs. Reid,
16 you survived till they are about to go in and deliber-
17 ate, so it is my pleasant duty to excuse you and tell
18 you how grateful we are that you were with us, because
19 if one of your fellow jurors had almost drowned, like
20 I did, last night, we would have needed you very badly.
21 I want to thank you. I know you have had an interest-
22 ing time.

23 What are their instructions?

24 THE CLERK: Report back to the central
25 jury part on the first floor, please.

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2 THE COURT: Thank you very much, both
3 of you.

4 (Two alternate jurors excused.)

5 (A marshal was duly sworn.)

6 THE COURT: I thank you, ladies and
7 gentlemen. You may now retire and consider your ver-
8 dict.

9 (The jury retired at 3:05 p.m. to commence
10 its deliberations.)

11 THE COURT: Will you marshal your exhibits
12 in case there is any request made for them, and if
13 they do request them, if you are not here, I'd like
14 Mr. Wallace to send them in.

15 All right.

16 MR. LIVINGSTON: Thank you, your Honor.

17 THE COURT: Okay.

18 (Recess.)
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2 (3:30 p.m.; note received from the jury:

3 "We would like to see Government's Exhibits
4 1-16.")

5 (Court's Exhibit 2 marked.)

6 (Exhibits sent in to jury.)

7 (Recess.)

8 (4:35 p.m.; in the robing room.)

9 THE COURT: I mentioned to you you didn't
10 have to tell the jury they can get testimony. They
11 ask for it anyway. We have a note asking for Lorraine
12 Glover's testimony. We can't give them a copy, but,
13 Mr. Reporter, it was very short. Let's do that. Get
14 them in and read it to them.

15 (In open court.)

16 (4:45 p.m.; jury present.)

17 THE COURT: Good afternoon, ladies and
18 gentlemen. I received a note saying you'd like a
19 copy of Lorraine Glover's testimony. There is no copy,
20 but I can ask the reporter to read it to you. And
21 if you hear what you want to hear, just hold up your
22 hand and he won't read any more.

23 Mr. Reporter, will you kindly read the
24 testimony.

25 (Testimony read.)

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2 THE FOREMAN: I think that is enough.

3 THE COURT: All right. Continue with your
4 deliberations.

5 (At 4:55 p.m. the jury retired to resume
6 its deliberations.)

7 (Court's Exhibit 3 marked.)

8 (Recess.)

9 (5:30 p.m.; jury present.)

10 (Jury roll called; all present.)

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Not more than five minutes.

MR. LIVINGSTON: Your Honor, Mr. Joy, ladies and gentlemen of the jury:

I would just like to make a few final points. On May 18, 1976, Mr. Feiman took a count of Lorraine Glover's box and she was in balance. She had the right amount of money on that day. There is another point made that possibly a fellow employee took the money while she was away from the desk, but ask yourselves, would a thousand dollars be missing that way, a thousand dollars?

There is also a suggestion that from the time Mrs. Bolling took a count of what was in the box, when she found that there was something like \$973 missing, there was a suggestion that between that time somebody stole the money, or somehow the money was missing, the difference between the \$973 and the \$1007 that was found to be missing later that afternoon, when the inspectors took the count.

But Mrs. Bolling testified that she took 15 to 20 minutes to take that count. Fifteen to 20 minutes to count about \$800 worth of stamps and in a variety of denominations, small change, etc., etc. Now, isn't it feasible she might make a mistake,

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in a 15- to 20-minute count. The inspectors took an hour. You heard them testify a number of times they took a full hour to take that audit.

Now, you also heard Mrs. Bolling testify that on August 17th every box was audited. Did Mr. Joy ask her if there were any shortages in those boxes on August 17th.

Aks yourselves, why didn't he ask about that?

Now, the government doesn't pretend to know what Lorraine Glover did with the money. All we know is that she took it. She said she took it. The money was missing. And she fabricated a big story. The story about the abortion. We don't contend that is true. That is clearly a lie. I agree with Mr. Joy, it was a marvelous, marvelous fiction.

How about the missing check? That was a marvelous fiction too, wasn't it?

She told you about the check, but if that was true, wouldn't she have followed up on it, if that was true? Didn't she know that she was being charged with a crime here? Why didn't she follow up on that missing check.

Ladies and gentlemen, you may live a hundred years, and you may be on a hundred juries, but you will

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never see a case where the proof of guilt is stronger than in this case.

MR. JOY: I object to that, your Honor.

THE COURT: It's up to the jury.

MR. LIVINGSTON: Just look at the evidence, ladies and gentlemen. Remember the oath that you took when you started this trial, and base your decision on an objective study of the evidence. Remember, your job is to find the truth. A sympathy verdict would be a distortion of the truth, and it is a difficult job that you have, but it is as important as it is difficult. Render a verdict based on the evidence, and if you do that, I'm sure that you will find beyond a reasonable doubt that Lorraine Glover is guilty.

Thank you.

THE COURT: Ladies and gentlemen, we will take a five-minute recess and then I will deliver my charge.

(Recess.)

(They left the courtroom.)

THE COURT: Mr. Wallace, have you got a marshal?

THE CLERK: I'm going to call him again.

CERTIFICATE OF SERVICE

July 20, 19⁷⁷

I certify that a copy of this brief and appendix has been mailed to the United States Attorney for the Southern District of New York.

Jonathan J. Silbermann